IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.188 OF 2004
IN
SECOND APPEAL NO.410 OF 1994

1.Smt. Suman Pratapsingh Kulal since
deceased throuhg LRs.
a. Shri Anil alias Rajendra Pratapsingh
Kulal and ors. ..Applicants
Versus
Smt.Sushila Bhairyasingh Kulal and Anr....Respondents

Mr.Sanjiv J.Rairkar for applicants
none for respondents

CORAM : P.V.KAKADE, J.

DATE : 7TH OCTOBER, 2005

P.C.:

1. Heard the learned advocate for the applicants. None appears for the respondents.

2. This is an application for taking necessary steps for alleged wilful default on the part of the respondent no.1 in complying with the order of this court dated 4.8.1994 and 10.7.1998 in Civil Application No.3367 of 1994 and Civil Application No.5424 of 1998 in Second Appeal No.410 of 1994 and therefore, for vacation of the interim relief granted in favour of the

Respondent No.1.

3 After hearing the learned counsel for the applicant and perusing the affidavit in reply, it is obvious that as per the order of this court the payments were earlier made but those were delayed and now the payments are being diligently made. However, in the intervening period there was delay of about three years in making payments, which are now seen to be subsequently made and in view of this position as on today all the arrears and outstandings are clear.

4. The learned counsel for the applicants brought to my notice the earlier order passed in Civil Application No.5424 of 1998, which is condition in nature, which stipulates that in case of failure on the part of the respondent no.1 the order dated 4th August 1994 shall stands vacated. In view of this position it is submitted that due to the default already committed, the earlier conditional order is required to be revoked and the Stay stands vacated by virtue of the said Order.

5. I have perused the entire record. In view of the facts and circumstances though it is correct that

there was conditional order passed by this Court by which virtue the Stay stands vacated. However, since the payments are subsequently regularly made I am inclined to accept the plea on behalf of the respondent on certain conditions. It is hereby directed that the respondent no.1, for his earlier failure, shall pay cost of Rs.3000/= to the present applicants within two weeks from the date of this order, failing which the earlier conditional order passed in Civil Application NO.5424 of 1998 shall be automatically vacated. It is clarified that the order regarding payment of costs is in addition to the payments to be made regularly as per the earlier order.

6. It is also to be noted that there is one additional prayer made by the applicant for early hearing of the appeal. However, appeal appears of the year 1994, and therefore, such prayer cannot be granted at this stage. However, liberty is given to move this court for the same reliefs as again.

. With these directions the application is disposed of with no order as to costs.